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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/914,274	12/13/2001	Brian Bartlett	WALS-102	2341
23290	7590	03/10/2004	EXAMINER	
HOLLANDER LAW FIRM, P.L.C. SUITE 305 10300 EATON PLACE FAIRFAX, VA 22030			COE, SUSAN D	
			ART UNIT	PAPER NUMBER
			1654	

DATE MAILED: 03/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/914,274	<b>Applicant(s)</b> BARTLETT ET AL.	
	<b>Examiner</b> Susan Coe	<b>Art Unit</b> 1654	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 December 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 5 and 7-95 is/are pending in the application.
- 4a) Of the above claim(s) 31-82 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 5, 7-20 and 83-95 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. The amendment filed December 18, 2003, has been received and entered. The text of those sections of Title 35, U.S. Code, not included in this action can be found in a prior Office action.
2. Claims 1-4 and 6 have been cancelled.
3. Claims 83-95 have been added.
4. Claims 5 and 7-95 are pending.

### ***Election/Restrictions***

5. This application contains claims 31-82 drawn to an invention nonelected with traverse in the paper dated April 25, 2003. A complete reply to the final rejection must include cancelation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.
6. Claims 31-82 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the paper dated April 25, 2003.

### ***Claim Rejections - 35 USC § 112***

7. As set forth in the previous Office action, claims 8, 9, 17-20, and 23-25 are rendered by the use of the term "crude." Applicant argues that the phrase "crude" is defined appropriately; however, applicant has not explained what processing steps must be carried out or excluded from the normal processing of canola and palm oil in order to produce "crude" oils.

8. As set forth in the previous Office action, claim 20 is rendered indefinite by the use of parentheses. Applicant does not specifically address this rejection in the response.

9. As set forth in the previous Office action, claim 27 is indefinite because it is not clear what substance has been extracted and is the “aqueous extraction” referred to in the claim.

Applicant states that “ ‘aqueous extraction’ refers to extraction with or by water.” However, it is not clear **what** has been extracted.

*Claim Rejections - 35 USC § 102*

10. Claims 5, 85, and 86 are rejected under 35 U.S.C. 102(b) as being anticipated by O’Keefe et al. (Food Research International (1995), vol. 28, no. 4, pp. 417-424) for the reasons set forth in the previous Office action.

All of applicant’s arguments regarding this ground of rejection have been fully considered but are not persuasive. Applicant argues that O’Keefe does not disclose a diet that “maximizes the nutritional value of food produce...but without taint of the produce” because O’Keefe teaches that amounts higher than 4% produce taint. However, applicant’s claims 5, 85, and 86 are composition claims that only require one ingredient, fish meal in the amount of 5% to 20% of an animal total diet. O’Keefe teaches such diets. Thus, O’Keefe properly anticipates the stated claims. If O’Keefe’s diets have different effects than those of applicant’s claimed diets, then applicant’s claims do not include all of the essential elements and arguably do not function as claimed.

10. Claims 5, 85, and 86 are rejected under 35 U.S.C. 102(b) as being anticipated by Howe (World Review of Nutrition and Dietetics (1998), vol. 83, pp. 132-143) for the reasons set forth in the previous Office action.

All of applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive. Applicant argues that the reference does not disclose a diet that "maximizes the nutritional value of food produce...but without taint of the produce" because the reference teaches that amounts higher than 2% produce taint. However, applicant's claims 5, 85, and 86 are composition claims that only require one ingredient, fish meal in the amount of 5% to 20% of an animal total diet. The reference teaches such diets. Thus, the reference properly anticipates the stated claims. If Howe's diets have different effects than those of applicant's claimed diets, then applicant's claims do not include all of the essential elements and arguably do not function as claimed. In addition, Howe states that diets with up to 5% fish meal are "commonly used in commercial practice" (see page 137, first full paragraph). Thus, 5% fish meal is clearly an accepted amount of fish meal to use. Furthermore, the reference teaches that the addition of antioxidants can allow for the use of higher amounts of fish meal (see pages 139 and 140)

11. Claims 5, 85, and 86 are rejected under 35 U.S.C. 102(b) as being anticipated by Mandell et al. (World Review of Nutrition and Dietetics (1998), vol. 83, pp.144-159) for the reasons set forth in the previous Office action.

All of applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive. Applicant argues that the reference does not disclose a diet that "maximizes the nutritional value of food produce...but without taint of the produce" because

the reference teaches that the use of fish meal produces taint. However, applicant's claims 5, 85, and 86 are composition claims that only require one ingredient, fish meal in the amount of 5% to 20% of an animal total diet. The reference teaches such diets. Thus, the reference properly anticipates the stated claims. If Mandell's diets have different effects than those of applicant's claimed diets, then applicant's claims do not include all of the essential elements and arguably do not function as claimed.

12. Claims 5, 85, and 86 are rejected under 35 U.S.C. 102(b) as being anticipated by German Pat. No. 43 27 310 A1 for the reasons set forth in the previous Office action.

All of applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive. Applicant argues that DE '310 is drawn to producing milk not beef. However, applicant is arguing method limitations. This is a composition claim. The only required element of applicant's claim is a feed composition with 5% to 20% fish meal. The reference teaches such a feed composition. Thus, the reference properly anticipates the stated claims.

Applicant also argues that the diet of DE '310 would produce taint because Mandell teaches that diets with 10% fish meal produce taint. However, DE '310 does not discuss taint and contains different ingredients with the fish meal that are not included in Mandell. Thus, it cannot be assumed that the diet of JP '310 would produce the same results.

13. Claims 5, 85, and 86 are rejected under 35 U.S.C. 102(b) as being anticipated by US Pat. No. 5,133,963 for the reasons set forth in the previous Office action.

All of applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive. Applicant argues that US '963 does not anticipate the claims

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because it only teaches using vacuum deodorized fish meal. However, applicant's claims do not exclude this type of fish meal. Thus, US '963 properly anticipates the stated claims and would have the same results if applicant's invention functions as claimed.

***Claim Rejections - 35 USC § 103***

14. Claims 5, 7-30, and 83-95 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Keefe or Howe or Mandell in view of Japanese Pat. No. 06209720 A, Roubal (Journal of the American Oil Chemists' Society (1963), vol. 40, pp. 215-218), US Pat. No. 5,130,242, US Pat. No. 5,972,391, and US Pat. No. 5,112,624 for the reasons set forth in the previous Office action.

All of applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive. Applicant argues that the prior art references do not teach using the claimed amounts of fish meal because the prior art references teach that the higher amounts produce taint. However, Howe teaches that the addition of antioxidants to the fish meal composition allows for higher amounts of fish meal to be used. Thus, a person of ordinary skill in the art would expect that higher amounts of fish meal are desirable with the addition of antioxidants to the fish meal.

In addition, applicant argues that JP '720 does not teach or suggest combining green tea extract with fish meal. However, all the references are concerned with the same problem, improving the quality of animal products. Thus, since the references together teach that both fish meal and green tea improve the quality of these products, then a person of ordinary skill in the art would expect that the combination of fish meal and green tea would be desirable and produce good results when fed to the animal.

Applicant also argues that Roubal does not teach or suggest an animal feed supplement that contains all of the claimed constituents or produces a feed product with the claimed results. However, Roubal does teach that tuna contains EPA, DHA, and DPA. The prior art references clearly teach that the fish meal used needs to contain long chain fatty acids such as EPA, DHA, and DPA. Therefore, a person of ordinary skill in the art would be motivated to use tuna as the source of the fish meal in the diets taught by the references.

Applicant also argues that US '242 teaches away from using fish meal at all as a feed supplement. However, since the fish meal references teach that fish meal is desirable except for the problem of oxidation, a person of skill in the art would be expected to look at other references concerned with the problem of oxidation in omega-3-fatty acids. US '242 is such a reference. US '242 teaches a number of antioxidants that serve to protect omega-3-fatty acids from oxidation. Thus, an artisan seeking to remedy the oxidation problems discussed by the fish meal references would reasonably expect that the antioxidants of US '242 would alleviate the oxidation of the fatty acids. Therefore, based on this reasonable expectation of success, the artisan would be motivated to add the claimed antioxidants to the fish meal compositions taught by the references.

Applicant argues that it is not well known in the art to add fats such as canola or palm oil to animal feed supplements. In rebuttal of this assertion by the applicant, please note US Pat. No. 5,540,932 which teaches using canola and palm oil as fat sources in animal feed (see claim 5).



Applicant argues that US '391 does not remedy the other problems of the prior art references. However, the references taken as a whole are still considered to teach the claimed invention for the reasons discussed herein.

Applicant also argues that US '624 does not teach or suggest adding peppermint to the fish meal composition. However, US '624 teaches using peppermint to improve the flavor of animal feed (see column 2, line 40). This is clearly desirable when producing an animal feed; thus, it would be obvious to add peppermint to animal feeds.

Since all of the ingredients are known in the art to lend beneficial characteristics to animal feed, it is considered obvious to add the ingredients claimed by applicant to the fish meal composition taught by the primary fish meal references, O'Keefe, Howe, Mandell, DE '310, and US '963.

15. No claims are allowed.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Coe whose telephone number is (571) 272-0963. The examiner can normally be reached on Monday to Thursday from 8:00 to 5:30 and on alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda Brumback, can be reached on (571) 272-0961. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

Susan Coe, Examiner  
March 4, 2004



LEON B. LANKFORD, JR  
PRIMARY EXAMINER